

21 C.J.S. Courts § 83

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Courts

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II. Jurisdiction of Courts

G. Discretion of Court to Exercise or Decline Jurisdiction

2. Forum Non Conveniens as Basis for Declining Exercise of Jurisdiction

§ 83. Adequacy of alternative forum as factor for forum non conveniens

[Topic Summary](#) | [References](#) | [Correlation Table](#)

West's Key Number Digest

West's Key Number Digest, [Courts](#)  40.10(1) to 40.10(5)

The forum non conveniens determination commences with an evaluation of whether another jurisdiction constitutes an adequate or suitable alternative forum in which the litigation can be brought; while equivalent and favorable law is not required, an action and remedy must be available, and it must appear that in the courts of foreign countries principles of fairness and due process will be observed.

In considering the application of principles of forum non conveniens as a basis for declining the exercise of jurisdiction, a prerequisite is the existence of an adequate or suitable alternative forum in which justice may be had.¹ The forum determination commences with an evaluation of whether another jurisdiction constitutes an adequate alternative forum in which the litigation can be brought.² Ordinarily, this requirement will be satisfied when the defendant is amenable to process in the other jurisdiction,³ the defendant is subject to jurisdiction in the other forum, and the cause of action is not barred by the statute of limitations.⁴ The court may also consider factors affecting the court's own administrative and legal problems as rendering the alternative forum in appropriate.⁵

An alternative forum does not have to be equivalent to the chosen forum to be adequate, but dismissal is inappropriate if the alternative forum precludes litigation of the subject matter of the dispute.⁶ The court's determination necessarily requires it to consider whether the case will proceed in the alternative forum.⁷ An alternative forum does not become unsuitable simply because the law is less favorable or recovery is more difficult, if not impossible,⁸ or because a specific cause of action or a specific claim is unavailable as long as some cause of action is still available to the plaintiffs.⁹ An alternative forum is adequate

so long as some relief, regardless however small, is available should the plaintiff prevail.¹⁰ In those rare circumstances in which the remedy offered by the alternative forum is so clearly inadequate or unsatisfactory that it is no remedy at all, the requirement of an adequate alternative forum may not be met.¹¹

Foreign country forum.

A forum in a foreign country is adequate when the parties will not be deprived of all remedies or treated unfairly even though they may not enjoy the same benefits as they might receive in an American court.¹² The substantive law of a foreign forum is presumed to be adequate unless the plaintiff makes some showing to the contrary or unless conditions in the foreign forum made known to the court plainly demonstrate that the plaintiff is highly unlikely to obtain basic justice there.¹³ Conversely, there is authority that before denying a United States citizen access to this country's courts on forum non conveniens grounds, the court must require positive evidence of unusually extreme circumstances bearing on the foreign forum and should be thoroughly convinced that material injustice is manifest.¹⁴

A forum in a foreign country is not an inadequate forum for a case arising out of an automobile collision because damage awards in the state court might be more generous for the type of injuries suffered by the plaintiffs nor because the foreign court does not allow for jury trials in automobile-negligence cases or for punitive-damage or consortium claims.¹⁵

A forum in Iran was not a suitable alternative forum for state forum residents' lawsuit against Iranian residents over an alleged breach of fiduciary duty and misappropriation of real property located in Iran since the plaintiffs would face discrimination based on gender and religion in the courts of Iran in violation of due process, even though all parties were all citizens of Iran and even though the Iranian courts had acknowledged that the plaintiffs were heirs, where two of the three plaintiffs were women, all of the plaintiffs were non-Muslims, and the Iranian legal system discriminated against women and non-Muslims.¹⁶

Peru offered an adequate remedy despite allegations that Peruvian courts were corrupt, absent evidence that the Peruvian judicial system was so corrupt as to effectively provide plaintiffs with no remedy at all.¹⁷

Mexico was not an adequate alternative forum for a Spanish-language television network's breach of contract and tortious interference claims against a competitor Spanish-language network, even though the dispute involved Mexican programming, since Mexico did not recognize any of the causes of action that the plaintiff could assert to obtain similar relief, and alternative causes of action recognized in Mexico required proof of additional elements or joinder of additional parties.¹⁸

CUMULATIVE SUPPLEMENT

Cases:

An alternate forum is not adequate, as part of the initial step in the analysis as to whether an action is subject to dismissal on the ground of forum non conveniens, if some procedural bar, such as a statute of limitations, would prevent litigation. [Restatement \(Second\) Conflict of Laws § 84. Saunders v. Saunders, 2019 WY 82, 445 P.3d 991 \(Wyo. 2019\).](#)

[END OF SUPPLEMENT]

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Footnotes

- 1 § 82.
- 2 Cal.—Investors Equity Life Holding Company v. Schmidt, 233 Cal. App. 4th 1363, 183 Cal. Rptr. 3d 219 (4th Dist. 2015).
- Utah—Energy Claims Ltd. v. Catalyst Inv. Group Ltd., 2014 UT 13, 325 P.3d 70 (Utah 2014).
- Wash.—Lisby v. PACCAR, Inc., 178 Wash. App. 516, 316 P.3d 1097 (Div. 1 2013).
- A.L.R. Library**
Forum non conveniens doctrine in state court as affected by availability of alternative forum, 57 A.L.R.4th 973.
- 3 N.J.—In re Vioxx Litigation, 395 N.J. Super. 358, 928 A.2d 935 (App. Div. 2007).
- 4 Cal.—Aghaian v. Minassian, 234 Cal. App. 4th 427, 183 Cal. Rptr. 3d 822 (2d Dist. 2015), review denied, (May 13, 2015).
- 5 U.S.—Sinochem Intern. Co. Ltd. v. Malaysia Intern. Shipping Corp., 549 U.S. 422, 127 S. Ct. 1184, 167 L. Ed. 2d 15 (2007).
- R.I.—Kedy v. A.W. Chesterton Co., 946 A.2d 1171 (R.I. 2008).
- 6 Ill.—Saba Software, Inc. v. Deere and Co., 2014 IL App (1st) 132381, 390 Ill. Dec. 456, 29 N.E.3d 85 (App. Ct. 1st Dist. 2014).
- 7 Wash.—Sales v. Weyerhaeuser Co., 163 Wash. 2d 14, 177 P.3d 1122 (2008).
- 8 Cal.—Aghaian v. Minassian, 234 Cal. App. 4th 427, 183 Cal. Rptr. 3d 822 (2d Dist. 2015), review denied, (May 13, 2015).
- Change in law not conclusive or substantial**
N.Y.—Emslie v. Recreative Industries, Inc., 105 A.D.3d 1335, 964 N.Y.S.2d 350 (4th Dep't 2013).
- 9 N.J.—In re Vioxx Litigation, 395 N.J. Super. 358, 928 A.2d 935 (App. Div. 2007).
- 10 Wash.—Acharya v. Microsoft Corp., 189 Wash. App. 243, 354 P.3d 908 (Div. 1 2015).
- 11 N.J.—In re Vioxx Litigation, 395 N.J. Super. 358, 928 A.2d 935 (App. Div. 2007).
- 12 Ill.—Saba Software, Inc. v. Deere and Co., 2014 IL App (1st) 132381, 390 Ill. Dec. 456, 29 N.E.3d 85 (App. Ct. 1st Dist. 2014).
- Tex.—Brenham Oil & Gas, Inc. v. TGS-NOPEC Geophysical Company, 472 S.W.3d 744 (Tex. App. Houston 1st Dist. 2015).
- 13 Tex.—Brenham Oil & Gas, Inc. v. TGS-NOPEC Geophysical Company, 472 S.W.3d 744 (Tex. App. Houston 1st Dist. 2015).
- 14 Fla.—Cortez v. Palace Resorts, Inc., 123 So. 3d 1085 (Fla. 2013).
- 15 N.J.—Yousef v. General Dynamics Corp., 205 N.J. 543, 16 A.3d 1040 (2011).
- 16 Cal.—Aghaian v. Minassian, 234 Cal. App. 4th 427, 183 Cal. Rptr. 3d 822 (2d Dist. 2015), review denied, (May 13, 2015).
- 17 Tex.—In re BPZ Resources, Inc., 359 S.W.3d 866 (Tex. App. Houston 14th Dist. 2012).

